



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,062	07/21/2003	Jeffrey Hutchinson	RWB-040US1	5170
31344	7590	03/22/2005	EXAMINER	
RATNERPRESTIA			TRAN LIEN, THUY	
P.O. BOX 1596			ART UNIT	PAPER NUMBER
WILMINGTON, DE 19899			1761	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,062

Applicant(s)

HUTCHINSON ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/734,094.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1761

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, line 2 is not clear because a word is missing; it is suggested applicant insert the word --- onto-- before "said baked".

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lonergan et al (WO 98/30105) in view of Averbach.

Lonergan et al disclose a glaze comprising 10-80% edible oil; this glaze is coated on dough product to impart a fried surface texture to the product when it is baked. The

Art Unit: 1761

application of the glaze to the dough products, followed by baking mimics the frying step which is traditionally used in the production process of certain dough products. The unbaked dough product may be any unbaked dough product to which it is desirable to impart a fried texture without a frying step. The dough product may a pizza crust, doughnut, beignet, tortilla etc... The particular edible oil or combination of edible oil is not critical and is chosen on basis of convenience and desired flavor. Suitable oils include soy oil, peanut oil, olive oil etc. (See pages 2-6)

Lonergan et al do not disclose a yeast-raised doughnut, coating with a second coating comprising a fat after cooking, spraying when the baked dough is still warm, spraying within 3 minutes after baking

Averbach discloses an edible moisture barrier. The barrier comprises about 98% fat and no more than about 5% of edible waxes. The barrier is used to inhibit moisture migration through a surface of a food product. The food product may be cooked by baking and includes baked goods such as doughnuts, cookies, etc. Suitable oils include palm oil, soy oil . A combination of oils can be used. (see col. 3)

The language "consisting essentially of" in claims 2,3, 15,19 does not define over the prior art because the instant specification does not recognize the criticality of excluding the additional components in Longergan et al. Furthermore, as cited in claim 5, the coating comprises at least 80% by weight fat and Longergan et al disclose 80% fat. It would have been obvious to one skilled in the art to make a yeast-raised doughnut following the Lonergan et al teaching to obtain a low fat doughnut. Lonergan et al disclose doughnut which would include both cake doughnut and yeast-raised

Art Unit: 1761

doughnut; Lonergan et al disclose the process is applicable to any dough product which it is desirable to impart a fried texture without a frying step. The composition and steps of forming yeast-raised doughnut are well known in the art as shown by applicant on page 1. It would have been obvious to one skilled in the art to apply a moisture barrier as taught by Averbach to the product after baking to obtain the moisture barrier function and benefits taught by Averbach. Averbach teaches the barrier can be used on doughnut. It would have been obvious to one skilled in the art to heat the coating composition to facilitate the coating process. It would have been obvious to coat the product soon after baking to making the coating process easier because the fat coating can easily melt into the warm product. It would have been within the skill of one in the art to determine the coating parameters which would give the most optimum product.

Claims 13-14 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lonergan et al in view of Averbach as applied to claims 1-12 and 15-20 above, and further in view of Loh et al.

Lonergan et al do not teach baking with steam.

Loh et al disclose a process for making low-fat cake donuts; the donuts are baked. They teach to inject steam into the oven during at least the first half of the baking cycle to maintain surface moisture of the dough in order to prevent undesirable crust formation during baking which might preclude proper expansion and structure formation. (See col. 3 lines 25-35)

Art Unit: 1761

It would also have been obvious to apply steam during the baking to obtain the benefit taught by Loh et al. The duration of the steam can be determined by one skilled in the art through experimentation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 17, 2005


LIEN TRAN
PRIMARY EXAMINER
Group 1700